1978

Paul Christensen v. Weldon S. Abbott : Brief of Respondent

Utah Supreme Court

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George E. Mangan; Edward W. Clyde; Attorneys for Appellant;

IN THE SUPREME COURT OF THE STATE OF UTAH

PAUL CHRISTENSEN, :

Plaintiff-Appellant, :

vs. : Civil No. 15574

WELDON S. ABBOTT, :

Defendant-Respondent, :

RESPONDENT'S BRIEF

APPEAL FROM JUDGMENT
of the
FOURTH JUDICIAL DISTRICT COURT
DUCHESNE COUNTY, STATE OF UTAH

The Honorable Allen B. Sorensen, Judge

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RESPONDENT'S BRIEF

NATURE OF THE CASE

Plaintiff-Appellant Christensen sued to enforce payment of the $111,000 promissory note of Defendant-Respondent Abbott and sought to recover $37,200 for the care for 200 head of Angus cattle, which had been purchased by Abbott from Christensen and which were involved in the joint ranching operation of the parties.

Respondent Abbott pleaded as an affirmative defense an accord and satisfaction, which settled all accounts between the parties which involved their joint ranching venture. Both parties admitted the joint venture being constituted by (1) the Abbott to Christensen note for the black Angus cattle purchase, and (2) the joint Christensen-Abbott purchase and operation of the Haslem ranch and other red cattle.

DISPOSITION IN THE LOWER COURT

The case was tried before the Honorable Allen B. Sorensen, without a jury. The court found that the Christensen-Abbott business venture had failed and that on April 28, 1976 the parties had entered into an accord and satisfaction agreement, which covered a division of all property and debts of the joint venture. The court dismissed plaintiff's complaint with prejudice for no cause of action.

RELIEF SOUGHT ON APPEAL

Affirmance of the judgment of the trial court after trial in this matter.

STATEMENT OF FACTS

Appellant's statement of facts is confusing and argumentative. Respondent sets forth this statement of relevant facts and the proofs of those facts as was made by both parties before the trial court, in accordance with the fundamental principle that respondent is entitled to every reasonable inference from those facts which support the findings and judgment of the trial court.

The Christensen-Abbott joint venture involved two separate business transactions, with a continuing joint ranching operation. First, on March 6, 1974, Abbott purchased from Christensen 200 black Angus cattle. Abbott received a bill-of-sale (Exh.P-14) and gave to Christensen his promissory note for $111,000 (Exh.P-1

Then, in April, 1974, Christensen and Abbott purchased the Haslem Blue Mountain Ranch with 250 red cattle for $703,500. The initial payment was $173,500, of which Christensen paid $85,000 and Abbott paid $88,500 with the understanding with the Haslems that the cattle were to be considered as fully paid for (R-40). The balance of the purchase price was represented by the Christensen-Abbott promissory note to the Haslems for $529,500, payable in annual installments over ten years (Exh.P-35). The parties jointly received a bill-of-sale for the Haslem cattle (Exh.P-10), and Christensen immediately gave to Abbott a bill-of-sale for the same cattle (Exh.P-11).

The Angus cattle and the Haslem cattle were all placed on the Haslem ranch and BLM range land, under the operation of Christensen, until April, 1976. It was agreed between Christensen and Abbott that they would each take half of the calf crop (R-168).

The Haslems sued Christensen and Abbott to foreclose the delinquent mortgage (R-202,242), and in April, 1976 it became apparent to Christensen and Abbott that their ranching venture was a failure. They then agreed to conclude the joint venture and to settle their accounts, with the 250 red cattle being split, with 44 to Abbott and the remainder to Christensen, with an assignment to Abbott by Christensen of the latter's interest in the Haslem contract and an assumption by Abbott of the Haslem mortgage, including the delinquencies of $193,187.95 (Exh.P-35), less $20,000 paid on interest, or $173,187.95, plus accrued

interest. The Haslem assignment and assumption instrument (Exh.P-4) was prepared by Dennis Draney, the law partner of George Mangan, Christensen's attorney (R-291). Draney and Mangan each admitted (R-292,294) having a joint financial interest in the Haslem ranch, as they had contributed about $45,000 toward Christensen's part of the purchase down payment (R-294,295).

The foregoing is a recital of admitted facts. The controversy arises from the conflicting testimony of the parties as to their intention with respect to the Haslem red cattle, the black Angus cows, the assignment and assumption agreement (Exh. P-4), and the arrangement of the parties with regard to operation of the Haslem ranch.

Abbott's testimony was that the parties always intended to own the ranch jointly, but that the 250 head of cattle purchased therewith were to be property of Abbott and that in the operation of the Haslem property Christensen was to pay all costs of feeding and pasturing the cattle and to furnish all labor therefor (R-239), and in return he was to receive and did in fact receive the proceeds of one-half of the calf crop (R-146, 155, 156 and 164). Abbott testified that the purpose and intent of the parties in the execution of the Haslem contract "Assignment and Assumption Agreement" (Exh.P-4) was not only that he assume and pay the note in favor of Haslem, including all arrearages of interest, but also that his

promissory note to Christensen (Exh.P-1) would be cancelled and Abbott would own outright the 200 head of Angus cows (R-241-243). This settlement was in consideration of the liabilities assumed by Abbott and further in consideration of the fact that Abbott received only 44 of the 250 head of cattle purchased with the Haslem property, and made certain payments to Christensen. (Exhs. 5, 6, 7, 8 and 9; R-239-40)

Christensen testified that the agreement for operation of the Haslem ranch was that the parties were to be joint owners of the ranch and all of the cattle purchased therewith; that the parties were to share equally in all of the ranching expenses incident to grazing the cattle and were to share equally in the calf crop (R-168). In addition, Christensen testified that he was to receive a wage for managing the Haslem property (R-179). Christensen testified that the purpose and intent of the assignment and assumption agreement (Exh.P-4) was only to settle the rights of the parties in the real property and their obligations under the note and mortgage, and he admitted that Abbott was to assume and pay all of the arrearages, both principal and interest, on the Haslem note (R-202,203). Christensen said that Abbott would be liable for one-half of all of the costs incurred in feeding and grazing the cattle during the time the parties were in possession of the Haslem ranch (R-202,203).

The evidence adduced by Christensen at the trial purports to show the total amounts expended in the joint ranching operation and the reasonableness of such expenditures. The expenses are not broken down as to the Angus cows and the other joint operations.

After a two-day trial, Judge Sorensen gave a memorandum decision (R-40), stating:

> It would appear that, no matter what the business arrangement was between the parties prior to April 28, 1976, on that date both parties concluded the business had failed, and they therefore settled between them a division of the property and debts. The court finds that Exhibit 4 covers only a part of that settlement.
>
> The court concludes that on April 28, 1976, there was an accord and satisfaction, and therefore finds no cause of action.

The findings (R-41) and judgment (R-43) concluded that there was an accord and satisfaction, which settled between the parties a division of the property and the debts of their business operation. Christensen's complaint for recovery on the $111,000 note and for care of the Angus cattle was dismissed.

By the terms of the accord and satisfaction Abbott was to receive the 200 Angus cows and 44 head of the Haslem cows. The court necessarily concluded that Christensen was entitled to recover nothing for care and feeding prior to April 28, 1976, since the accord and satisfaction adjusted all accounts between the parties. Christensen wrongfully refused to deliver the 200

Angus cows to Abbott after April 28, 1976, and could not recover costs or services incurred because of his wrongful refusal to make delivery.

ARGUMENT

The only issue before this court is whether there was sufficient credible evidence to support the trial judge's finding that there had been an accord and satisfaction between the parties, which settled and divided the properties and debts of the joint Christensen-Abbott ranching operation.

Appellant has attempted to obscure the issue by his confusing recital of details of the ranching operation, all of which were resolved in the final settlement between the parties. The only writing involved in the settlement; that is, the assignment by Christensen and assumption of the Haslem contract by Abbott, was an instrument of transfer and as such it was only a part of the whole settlement agreement. Abbott's note to Christensen and any difference in what he did pay and what he might have owed for care of his Angus cattle were the only matters on which Christensen sued, and these matters were resolved by the whole final settlement. These were the trial court's findings after a two-day trial, where the details of the ranching operation and the procedure in settlement were fully examined. The review by this court should give the traditional respect to the trial court's findings after trial.

POINT I.

A COMPLETE, COMPREHENSIVE ACCORD AND SATISFACTION DIVIDING ALL OF THE PROPERTIES AND THE DEBTS OF THE JOINT VENTURE WAS MADE AND EXECUTED BY THE PARTIES.

The Utah court in Browning v. Equitable Life Assurance Society (1937), 94 U.532, 72 P2d 1060, reh.den. 94 U.570, 80 P2d 348, cited at 1 Am.Jur.2d 301, defined an accord and satisfaction as:

> An accord is an agreement between parties, one to give or perform, the other to receive or accept, such agreed payment or performance in satisfaction of a claim. The "satisfaction" is the consummation of such agreement. There must be consideration for the agreement. Settlement of an unliquidated or disputed claim where the parties are apart in good faith presents such consideration.

Cannon v. Stevens School of Business, Inc. (1977)(Utah), 560 P2d 1383, 1386, citing to 1 Am.Jur.2d 301-302, gave this definition:

> An accord and satisfaciton is a method of discharging a contract, or settling a claim arising from a contract, by substituting for such contract or claim an agreement thereof, and the execution of the substituted agreement.

Smoot v. Checketts (1912), 41 U.211, 125 P.412, held that an accord and satisfaction is established, with good consideration, where the debtor pays and the creditor accepts less than the full amount due on a disputed or unliquidated claim.

Bennett v. Robinson's Medical Mart, Inc. (1966), 18 U2d 186, 417 P2d 761, restated the definition of accord and satisfaction as in Browning, supra, and then reviewed the evidence before the trial court and affirmed that court's conclusion that the cashing of a check marked "payment in full" did not by itself constitute an accord.

A series of Utah cases, including Bennett, supra, placed the burden of pleading and proof of accord and satisfaction on the party raising that affirmative defense.

The Utah court in Badger & Co. v. Fidelity Building & Loan Association (1938), 94 U.97, 75 P2d 669, reaffirmed the Browning and Smoot cases, supra, and held that the party pleading an accord and satisfaction had the burden of proving that defense.

Hintze v. Seaich (1968), 20 U2d 275, 437 P2d 202, held that the affirmative defense of accord and satisfaction must be pleaded and proved by a preponderance of evidence. In Hintze there was no pleading of that affirmative defense, only an answer disputing the commission due under an oral employment agreement, and the court followed the Bennett case, in holding that the cashing of a check marked "payment in full" was not alone sufficient proof of a meeting of minds for an accord and satisfaction.

Tates, Inc. v. Little America Refining Co. (1975)(Utah) 535 P2d 1228, again involved a question of whether the debtor in cashing a check for less than the full amount alleged due

constituted an acceptance for an accord and satisfaction agreement. The court placed the burden of proof on the party alleging the accord and satisfaction, citing to Hintze, supra. In Tates, the trial court found that there was no acceptance by the debtor of the lesser amount and thus no accord or satisfaction. The court, citing to Memmott v. U.S. Fuel Co. (1969), 22 U2d 356, 453 P2d 155, stated:

> On appeal we apply the traditional rules of review: we assume that the trial court believed those aspects of the evidence which may be deemed to support his finding and judgment; and we survey the evidence in the light favorable thereto.

Cannon, supra, is the most recent Utah accord and satisfaction case. There the Supreme Court affirmed the trial court's ruling that cashing a check for a lesser amount than due on an employment contract was not proof of an accord and satisfaction, citing to the Tates and Hintze cases, supra.

The Utah cases have consistently held that the sufficiency of evidence of an agreement and the credibility of witnesses are the prerogatives of the trial court. In Paulsen v. Coombs (1953), 123 U.49, 253 P2d 621, the trial court was affirmed in finding that the party with the burden of proof had met that burden, citing Northcrest, Inc. v. Walker Bank & Trust Company (1952), 122 U.268, 248 P2d 692, and saying:

> The question of whether evidence is sufficient to be clear and convincing is primarily for the trial court; his finding should not be disturbed unless we must say as a matter of law that no one could reasonably find the evidence to be clear and convincing.

In Page v. Federal Security Insurance Co. (1958), 8 U2d 226, 332 P2d 666, the Utah court states:

> The traditional and well established rule is: the fact trier, in this instance the jury, has the prerogative of judging credibility of witnesses and the weight to be given the evidence.

Let us now apply the Utah case law to the Christensen v. Abbott facts and trial. The single issue of fact and law was pleaded by respondent in his affirmative defense of accord and satisfaction (R-7). The two-day trial was entirely devoted to proofs by respondent and rebuttal by appellant of respondent's allegation of accord and satisfaction. The trial court's finding, after hearing all of the evidence, was that there was an accord and satisfaction agreement between the parties (R-40), thus concluding that respondent had met his burden of proof. If there were any variance in the evidence, the trial court weighed that evidence and the credibility of the witnesses in finding for respondent.

Appellant's statement of facts admits that two separate transactions made up the present dispute, these being (1) the Abbott purchase of the 200 black Angus cattle in consideration for Abbott's note to Christensen for $111,000 and (2) the Abbott-Christensen purchase of the Haslem ranch and red cattle, with the joint operation of these properties by Christensen.

The proof was that the black Angus and the red Haslem cattle were all run on the Haslem ranch and on BLM winter and

summer ranges, depending on the season (R-276). The expenses of the whole operation were summarized by appellant in his accounting summaries(Exhs. P-31,32 and 33).

A reading of the trial transcript shows complete and utter confusion, prolixity and prolifera of testimony regarding black and red cows. Judge Sorensen commented near the end of the trial that the case had not proceeded in an orderly manner, and counsel agreed (R-283). Judge Sorensen asked Christensen if "your business venture had flopped," if the business arrangement came to an end then, and if it were being wound up on April 28 (1976), and Christensen agreed (R-304).

Abbott testified that in the settlement of the joint ranching venture the distinction between black and red cows was not important and that the ranch equity and debts and all cattle, black or red, were considered by the parties in arriving at their settlement agreement (R-255,285).

The trial court's Memorandum Decision (R-40) states:

> It would appear that, no matter what the business arrangement was between the parties prior to April 28, 1976, on that date both parties concluded the business had failed, and they therefore settled between them a division of the property and debts. The court finds that Exhibit 4 covers only a part of that settlement.
>
> The court concludes that on April 28, 1976, there was an accord and satisfaction, and therefore finds no cause of action.

We submit that respondent proved an accord and satisfaction, with settlement of all disputed transactions between the parties, by competent and credible evidence and testimony and

that the trial court's decision was entirely consistent with all of the Utah case law cited above.

POINT II.

THE HASLEM CONTRACT ASSIGNMENT AND ASSUMPTION AGREEMENT INSTRUMENT WAS ONE FACET ONLY OF THE COMPLETE ACCORD AND SATISFACTION.

A. THAT DOCUMENT WAS NOT INTENDED BY THE PARTIES AS AN INTEGRATED OR FINAL AGREEMENT.

The record and trial transcript show that the Christensen-Abbott joint venture, from its inception through its operation by Christensen to its conclusion, was loosely and ineptly handled, with a bare minimum of writings to document it (R-136), with great faith and trust by Abbott (R-242,243).

Appellant argues in Points III and IV of his brief that the Haslem contract Assignment and Assumption Agreement dated April 28, 1976 (Exh.P-4) was a final, complete, integrated contract; that parol evidence should not have been allowed to vary that writing; thus allowing appellant to come around at a later date to sue on the black Angus separate note.

Respondent agrees with the general rule that a completely integrated agreement or final memorandum cannot generally be varied by parol evidence. This rule is spelled out in the numerous cases cited by appellant; particularly, State Bank of Lehi v. Woolsey (1977)(Utah) 525 P2d 602, and Rainford v. Rytting (1969) 22 U2d 252, 451 P2d 769 and Lamb v. Bangart (1974)(Utah) 525 P2d 602.

Bullfrog Marina, Inc. v. Lentz (1972) 28 U2d 261, 501 P2d 266, addresses the real and only issue now before this court; that is, what is a final, complete, integrated writing? The court answered this saying:

> Whenever a litigant insists that a writing that is before the court is an integration and asks the application of the parol evidence rule, the court must determine as a question of fact whether the parties did in fact adopt a particular writing or writings as the final and complete expression of their bargain. In determining the issue of the completeness of the integration in writing, evidence extrinsic to the writing itself is admissible. Parol testimony is admissable to show the circumstances under which the agreement was made and the purpose for which the instrument was executed.

In Bullfrog Marina the trial court's determination, that a lease, a separate employment contract and other evidence of the parties' whole intention should all be considered together, was affirmed.

Abbott testified as to his understanding of the settlement of the entire joint ranching operation, with execution of the Haslem contract assignment and assumption agreement (Exh.P-4) as one part of the whole (R-241), and he testified as to the execution of that document as follows (R-242,243):

> A On this day this was the final day before foreclosure on the Blue Mountain Ranch and an injunction against Paul and I, you know, for the whole thing. I came out to Duchesne, went and talked to Paul and took him the papers to sign to settle the whole thing, and those papers had been prepared by you to deed everything over to me, and we agreed about the

division. He was to take half the cows, I got half the cows, and that canceled the note, and I gave those to him and he said, he had to go see George Mangan before he would sign anything. George was his partner on the Blue Mountain Ranch. He put in forty thousand dollars.

A Yes. And so I gave him (Christensen) the papers and he went to Mr. Mangan's office in Roosevelt and then I went to Roosevelt and waited there about three hours, and then he came back with this. (Indicating)

THE COURT: By "this" you mean Exhibit 4?

A Exhibit 4, yes, sir. And brought it up, and I looked at this and, you know, our previous full agreement had been I would take over those payments of the one hundred three thousand one year, the sixty-eight thousand the next year, and the half of about another thirty-five thousand back payments, fifty-six thousand dollars of back interest and thirty-eight thousand of current interest, and in settling this out he would--and all this was to apply on that note or my half of the cows. I got two hundred and he got two hundred. The color didn't make any difference. He was taking the red ones, so the black ones were then mine, and he was supposed to tear up the note. But this wasn't put in this thing. So Mr. Draney brought it in and handed this to me and said that, "Your lawyer said you were supposed to sign this." And I looked at it, and, of course, read it through and saw that I was assigning them the Haslem cattle, which is fine, but I was getting the black ones which they didn't put in, and I said to Paul at that time, "Now I will go ahead and sign this thing if you will simply go ahead and keep our oral agreement and let me have the black cows and tear up that note and no more tricks." And he said, "Fine." So I signed it.

Dennis Draney testified that he was the law partner of George Mangan, appellant's attorney, in 1976 (R-292); that he prepared the Haslem contract assignment and assumption instrument for Christensen; and that he delivered the instrument to Abbott for his execution (R-291). At that point in the trial, Judge Sorensen asked George Mangan if he had a financial interest in the Christensen-Abbott operation, and Mangan answered in the affirmative (R-292). Draney then admitted that he had a financial interest in the Haslem ranch because of his membership in an investment club with Mangan (R-294). Draney then testified that about $45,000 or $50,000 had been borrowed by the club for a down payment on the Haslem ranch deal (R-294,295).

The Haslem contract "Assignment and Assumption Agreement" (Exh. P-4) was clearly and simply an instrument of transfer of purchaser Christensen's interest in the Haslem real property and 44 head of cattle to Abbott, with assumption by Abbott of the obligations under the Haslem contract.

Continental Bank & Trust Co. v. Bybee (1957) 6 U2d 98, 306 P2d 773, and Mathis v. Madsen (1953) 1 U2d 46, 261 P2d 952, both hold that the intent of parties to an agreement should be ascertained first from the four corners of the instrument itself, second from other contemporaneous writings concerning the same subject matter, and third from extrinsic parol evidence of the intentions. Under the rule of those Utah cases, the Haslem contract "Assignment and Assumption Agreement" must be

construed from the language within the four corners of that document as a simple instrument of transfer.

The testimony of Abbott as set out above (R-241-243) clearly shows his intention and understanding that there was no complete or integrated writing which finalized the whole ranching operation settlement. Christensen agreed with Judge Sorensen's summarization that on April 28, 1976 the business arrangement came to an end, the "business venture flopped" and it was being wound up then (R-304).

Continental Bank v. Bybee, supra, involved a situation where the attorney who drafted the questioned agreement was also a party to it. The Utah court held that under such circumstances the proper construction of the instrument should be strictly construed against him. Guinand v. Walton (1969) 22 U2d 196, 450 P2d 467, held that a document drawn up by defendants through their attorney had to be strictly construed against defendants. Skousen v. Smith (1972) 27 U2d 169, 493 P2d 1003 held: "It is axiomatic that language in a written instrument is interpreted more strongly against a scrivener who executes it."

The Haslem contract "Assignment and Assumption Agreement" was prepared by Dennis Draney, the law partner of Christensen's attorney, and both Draney and George Mangan admitted having very substantial financial interests in the Haslem ranch purchase with Christensen. Certainly that instrument must be construed strictly as to what it really was; that is, an instrument of

> Now I will go ahead and sign this thing if you will simply go ahead and keep our oral agreement and let me have the black cows and tear up that note and no more tricks. And he said, 'Fine.' So I signed it.

No objection was made to this testimony. The transcript is devoid of any objection by appellant to any testimony or evidence on the ground of varying any writing by parol evidence.

Pettingill v. Perkins (1954) 2 U2d 266, 272 P2d 185, held:

> Generally, appellate courts will not review a ground of objection not urged in the trial court. 3 Am.Jur.116, Appeal and Error, 381. The duty is incumbent upon counsel to give the trial court the opportunity to correct the error before asking the appellate court to reverse a verdict and judgment thereon.

Pettingill was followed, and the language quoted above was approved, in Steele v. Wilkinson (1960) 10 U2d 159, 349 P2d 1117, and Porcupine Reservoir Co. v. Keller Corp. (1964) 15 U2d 318, 392 P2d 620.

Appellant's arguments in Points III and IV of his brief are raised for the first time on this appeal, which is improper, and those arguments cannot now be heard.

POINT III.

SATISFACTION OF THE ABBOTT TO CHRISTENSEN BLACK ANGUS NOTE WAS ONE OTHER FACET OF THE COMPLETE ACCORD AND SATISFACTION.

Appellant's complaint (R-1) sought (1) recovery on the $111,000 Abbott to Christensen note on the purchase by Abbott of the 200 black Angus cattle, (2) costs of care of those same cattle by Christensen, and (3) recovery of $5,000 for BLM

grazing fees paid by Christensen as an expense of the Haslem ranch operation. Appellant has obviously abandoned his third cause for relief, as he has not pursued it in this appeal. Respondent's answer to each of appellant's alleged causes for relief was the full accord and satisfaction, which required consideration and inclusion of the note, all joint ranching operation expenses and the Haslem ranch equity and obligations. Under this Point III respondent will limit argument to the matter of the note as a part of the whole settlement, and under Point IV the costs of black Angus care will be considered.

Foreclosure on the Haslem ranch mortgage was immediately impending on April 28, 1976, and Abbott testified (R-241) that for him to assume the Haslem obligations "the note was to be torn up." His testimony at R-242 and 243 is quoted in full under Point II A., where he said unequivocally that for him to make final settlement and assume the debts the note was to be cancelled.

In assuming the delinquencies on the Haslem mortgage, Abbott had to immediately make the payment due on January 1, 1975 of $125,027.95, the payment due on January 1, 1976 of $68,160.00 (Exh. P-35) and interest to April 28, 1976 of $8,753.32, less $20,000, which had been paid on interest (R-213), or a total delinquencies of $181,941.27. As consideration for this debt assumption and as part of the whole settlement, Abbott was to have cancellation of the $111,000 note, with a division

of the red Haslem cattle, with 44 to Abbott and the remainder of 250, or 206, to Christensen (R-242). During the ranch operation, Abbott had paid $11,945 (Exhs. 5,6,7,8 and 9). Abbott testified that these payments were intended to apply on the note, although a check to Les Herman for $4,445 (Exh.5) was marked for hay (R-114,115,135). Christensen testified that the same five payments were to apply on purchase of hay for the joint venture (R-171).

Abbott emphatically denied that the Haslem ranch assignment and assumption (Exh. P-4) applied solely to the Haslem deal in the final settlement (R-116), and he continued to show that his assumption of the Haslem delinquencies and continuing obligation more than satisfied the note in the final settlement (R-117).

After the final settlement on April 28, no demand was made by Christensen on Abbott on the note until the present suit was commenced on July 23, 1976 for the full $111,000 and interest (R-249).

The obvious complete lack of current accounting or documentation by the parties, and particularly by Christensen who was the operator during the ranch operation for two years, as demonstrated during the two-day trial, with a total mishmash of testimony, caused Judge Sorensen to conclude in his Memorandum Decision (R-40):

> It would appear that, no matter what the business arrangement was between the parties prior to April 28, 1976, on that date both parties concluded the business had failed, and they therefore settled between them a division of the property and debts.

The trial court's finding that the $111,000 note was satisfied as part of the whole settlement must be affirmed as required by the general rule for appellate review. The Utah court in Paulsen v. Coombs, supra, held:

> The question of whether evidence is sufficient to be clear and convincing is primarily for the trial court; his finding should not be disturbed unless we must say as a matter of law that no one could reasonably find the evidence to be clear and convincing.

POINT IV.

ANY MONEY OWING BY ABBOTT TO CHRISTENSEN FOR CARE OF ANY CATTLE WAS SETTLED AND SATISFIED AS A PART OF THE COMPLETE ACCORD AND SATISFACTION.

The second cause of action in appellant's complaint (R-1) was his claim for $37,200, limited to care of Abbott's 200 black Angus cattle from March, 1974 to July 4, 1976. Appellant proceeded by Order to Show Cause (R-16) to enforce an agistor's lien, asking sale of the black Angus cattle and their calves. The parties thereafter stipulated that those cattle should be sold under direction of Abbott, with the sale proceeds to be deposited in a joint bank account and to be released only on order of the court (R-35). The sale was made, and the proceeds of sale were deposited in such joint bank account. The judgment of the trial court (R-43) awarded the proceeds of the bank account to Abbott.

Abbott testified that the operation of the ranch was entirely pursuant to oral agreements, whereby Christensen would run all

of the cattle, black and red, and would pay all expenses of operation and in return would receive one-half of the calf crop (R-239,259), and that Christensen did in fact receive his share of the calves (R-146,155,156 and 164). Christensen testified that he received one-half of the calf crop (R-185) from both black Angus and red Haslem cattle (R-172), and that the expenses, including wages, were to be equally split (R-168,200).

Christensen's complaint is a claim for care for only the 200 black Angus. Christensen's proof of operating expenses paid by him went to the total operation (Exhs. P-31, P-32 and D-33), without any proof of actual expenses for care of the black Angus. Christensen testified then that one-half of the expenses were his (R-119,120), thus making his proof entirely inconsistent with his claim.

After two days of this prolifera of testimony, the trial court found that on April 28, 1976 "the parties settled and agreed between themselves to a division of the property and the debts of said business operation," and then concluded that "there was an accord and satisfaction between the parties" (R-41).

Appellant complains in Point V of his brief that Judge Sorensen did not make detailed findings "of the necessary elements" of the accord and satisfaction. In State of Utah in the interest of K.D.S. (1978)(Utah) 587 P2d 9, Judge Ellett answered a contention that insufficient findings of fact and

Conclusions of Law had been entered by the trial court, citing to In re Clift's Estate, 70 U.409, 260 P.859, and saying:

> The test for Rule 52(a) is whether or not the Findings of Fact and Conclusions of Law indicate clearly the mind of the court even though they are not in the artistic form of approved models.

Mojave Uranium Co. v. Mesa Petroleum Co. (1969) 22 U.2d 239, 451 P.2d 587, involved a problem of "elusiveness of the record," like in the instant case, where the trial court did not make detailed findings or conclusions. The Utah court stated:

> This court, in many cases has indulged the presumption that where the trial court did not make a specific finding on a particular phase of a case, that if such finding had been made it would be in harmony with the decision rendered. Probably the best statement of this proposition was made by Mr. Justice Wade in Mower v. McCarthy, 122 Utah 1, 245 P.2d 224 (1952), where it was stated that, 'In reviewing a case of this kind where issues of fact are involved and there are no findings of fact, we do not review the facts but assume that the trier of the facts found them in accord with its decision, and we affirm the decision if from the evidence it would be reasonable to find facts to support it.'

Judge Sorensen had before him a conflict of testimony as to the basic ranch operating arrangement, a dispute as to where and in what amounts payments by Abbott had or should have been applied; that is, on the Angus note or on ranch operations, and a disagreement as to which cattle, red or black, were intended to be divided on the final settlement. The parties were in agreement that a final settlement of the entire ranch operation

was intended and in fact was consummated on April 28, 1976. The trial court's findings and judgment must be affirmed.

POINT V.

THE TRIAL COURT'S FINDINGS AND JUDGMENT SHOULD BE RESPECTED ON APPELLATE REVIEW

The rule of respect for the trial court's findings and conclusions on appellate review is last firmly stated by the Utah court in Fisher v. Taylor (1977)(Utah) 572 P.2d 393:

> This Court has consistently followed the well-recognized standard of appellate review which precludes the substitution of our judgment for that of the trial court on issues of fact, and where its findings and judgment are based on substantial, competent, admissible evidence we will not disturb them.

In Wash-A-Matic v. Rupp (1975)(Utah) 532 P.2d 682, in a case involving contradictory evidence of the parties to a sales contract, the Utah court said:

> The evidence was sufficient to sustain the judgment made, and we should sustain the trial court even if we might have come to a different decision had we been trying the matter.

The Utah court has always followed the general rule of the Memmott case, supra, under Point I, that on appeal the evidence before the trial court must be reviewed in the light most favorable to sustain the findings of the trial court. This is the consistent holding of the Utah court in the Page, Northcrest, Inc. and Paulsen cases, cited supra by respondent in Point I. The

Utah court said in Prudential Federal Savings v. Hartford Acc. & Ind. Co. (1958) 7 U2d 366, 325 P2d 899:

> Inasmuch as the trial court found in favor of the plaintiffs, they are entitled to have us review the evidence and every reasonable inference fairly to be drawn therefrom in the light most favorable to them.

Judge Sorensen heard two days of detailed testimony and had the full opportunity to evaluate the credibility of the witnesses and of their testimony. His ultimate findings and judgment was that there was a complete accord and satisfaction between the parties, and he dismissed appellant's attempt to renege on that agreement. The trial court's findings and judgment must be affirmed.

CONCLUSION

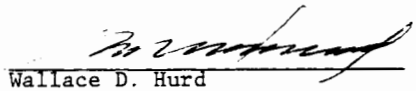
The only issue before this court is whether there was sufficient, competent and credible evidence to support the trial court's findings that there had been an accord and satisfaction between the parties, which settled and divided the properties and debts of the joint ranching venture.

The trial court's findings and judgment, after a two-day trial, were that the parties had been in a joint business venture, which had failed; that on April 28, 1976 the parties settled between themselves a division of the property and debts of the ranching operation, thus constituting an accord and satisfaction; and that Christensen had no cause of action against Abbott on the black Angus note or for care of those

particular cattle, whereas those matters were merged in the accord and satisfaction.

The trial court's findings and judgment must be respected and affirmed.

Respectfully submitted,



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